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WP 153 OF 2022-f.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 153 OF 2022

Nandini d/o. Kishor Navsare,
Age 17 years (Minor), Occ. Student,
U/g. father viz. Kishor S/o. Dongar Navsare,
Age 42 years, Occ. Private Service,
R/o. At Anand Khede, Post Khede,
Tq. and Dist. Dhule.

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary
Tribal Development Department
Mantralaya, Mumbai – 32
Through its Secretary.
2. The Schedule Tribe Certificate
Scrutiny Committee, Nandurbar Division,
Nandurbar,
through its Member Secretary.
(Copies for the respondent Nos. 1 and 2
to be served on the Government Pleader,
High Court of Judicature of Bombay,
Bench at Aurnagabad.

.. Respondents.

Mr. Sushant C. Yeramwar, Advocate for Petitioner
Mr. S. K. Shirse, AGP for Respondent Nos.1 & 2

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.
DATE : 10th JANUARY, 2024.**

Judgment (per S. G. Chapalgaonkar, J.) :-

Rule. Rule made returnable forthwith. Heard finally by
consent of learned advocates appearing for the parties.

Petitioner approaches this court under Article 226 of the Constitution of India thereby assailing the order 20.12.2021 passed by the Schedule Tribe Certificate Scrutiny Committee, Nandurbar, invalidating caste claim of the Petitioner for Tokre Koli scheduled tribe.

2. Mr. Sushant Yeramwar, learned counsel appearing for the petitioner submits that petitioner belong to Tokre Koli schedule Tribe. The competent authority had issued a caste certificate in her favour. While she was prosecuting studies, her tribe certificate was referred to Nashik Committee. The petitioner supported her claim by filing pre-constitutional documents i.e. school record of the great-grand father showing entry of 'Tokre Koli' in the caste column. The said document has been verified by the vigilance officer. No adverse comment is made in report doubting the genuineness of the said document. The petitioner has also submitted school record of her father and aunt, depicting the caste entries as Tokre Koli in caste column. The petitioner has also relied on the validity certificate issued in the name of Shri Narendra Ramdas Navsari who is her cousin grand-father who tendered an affidavit accepting the genealogy in claim of Akshada i.e. cousin of petitioner. Mr. Yeramwar would submit that the committee referring to some contra entries of Koli and Hindu Koli in the record of blood relations discarded the claim of petitioner. The approach of committee is inconsistent with the well settled legal position. He would therefore urge that by setting aside the impugned order, directions be issued to the committee for issuance of caste validity certificate to the petitioner.

3. Mr. S. K. Shirse, learned AGP appearing for Respondent

Nos.1 & 2 vehemently opposes the petition and supports the impugned order.

4. We have considered the submissions advanced by the learned Advocates appearing for the respective parties. We have also gone through original claim docket received from committee pertaining to petitioners claim so also the documents from the file of validity holder Narendra Ramdas Navsari. Apparently petitioner relies upon oldest document of 1933 in the form of school record of her great-grandfather i.e. Dhoman Maharu Koli. We have perused the extract of document which has been certified by the Headmaster, Zilla Parishad Primary School, Virdhal, Tq. Sindkheda, Dist. Dhule. Perusal of the document nowhere depicts that it is subjected to any manipulation in any manner. The entries of admission are consistently recorded with serial numbers. However, the committee observed that further columns in the register which pertains to date of leaving of school, transfer from school, etc. are blank. The committee observed that possibility of creating false document cannot be ruled out.

5. We find that such observations of committee are nothing more than surmise. The committee obtained the vigilance report. There are no adverse remarks pertaining to genuineness of said document. The document pertains to the pre-constitutional era. The entry of caste in such document would have highest probative value. We do not find any reason to discard such significant evidence. It is true that in many caste claims, committee observed manipulation in the old revenue or school record, however such negative presumption cannot be applied in every case. Such approach of the committee needs to be deprecated. In

absence of substantive reason to discard pre-constitutional evidence, the committee could not have refused to rely upon said documents.

6. Secondly, petitioner has also produced caste validity certificate granted in favour paternal blood relative Mr. Narendra Ramdas Navsari. The genealogy placed on record depicts that one Budha is common ancestor of the petitioner as well as said Narendra. He had four son namely Sakharam, Maharu, Narayan and Tanaji. The petitioner hails from the branch of Maharu, whereas; validity holder Narendra hails from the branch of Tanaji. The copy of affidavit of Narendra which was submitted by him in the caste claim of one Akshada who is also from the branch of Maharu is placed before us, wherein said Narendra accepted correctness of genealogy. In our considered view the aforesaid document adequately supports the caste claim of the petitioner.

7. It is true that the committee noted some contra entries of paternal blood relatives of the petitioner, which records caste as Koli or Hindu Koli. The law in such situation is well settled. The oldest pre-constitutional entry will have precedence over any subsequent entry regarding caste. In present case, school admission entry of petitioner's great-grandfather recorded in year 1933 is the oldest document available on record which supports the caste claim for Tokre Koli Scheduled Tribe. There are other entries depicting Hindu Koli and Koli in the school record of cousin uncle and aunts of the petitioner, those would be of no significance in the light of pre-constitutional entries supporting the claim. Similar view is taken by the Supreme Court of India in the matter of *Vina Ashok Godse V/s State of Maharashtra in order dated 29.09.2017 in CA No. 19968 of 2017* so also order passed by Division Bench of this court in

the case of *Prakita Kishor Suryawanshi V/s State of Maharashtra and another in Writ Petition No. 11298 of 2023, in order dated 13.09.2023.*

8. In view of aforesaid observations, we have no hesitation to hold that impugned order of the committee is perverse and is liable to be quashed and set aside. In result petition succeeds and we proceed to pass following order.

ORDER

- A] Writ Petition is allowed.
- B] The impugned order dated 20.12.2021 passed by the committee invalidating the caste claim of the petitioner is hereby quashed and set aside.
- C] The Respondent No.03 committee is directed to issue Caste Validity Certificate in favour of the petitioner for 'Tokre Koli Schedule Tribe' within period of one month from this order.
- D] Rule made absolute in above terms with no order as to cost.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-